

|| POLICY LEASE AND LICENCE

ASPIRATION	Community
RESPONSIBLE DIRECTORATE	Community Services
RESPONSIBLE BUSINESS UNIT	Recreation Services
RELEVANT LEGISLATION	<i>Local Government Act 1995</i>

1. Objective

The objective of this Policy is to:

- Ensure decisions about the granting of leases, licences and subsidies are made transparently and in accordance with established criteria; and
- Ensure the City's property is appropriately optimised and maintained in accordance with the City's Strategic Community Plan, Corporate Business Plan and Asset Management Plan.

2. Policy

Community, Financial, Historical and Environmental considerations have been taken into account in developing the following Guiding Principles:

- The City's preference for its community facilities is to encourage multiuse arrangements to maximise the benefit to the community. The City will, however, enter into a Lease or Licence agreement where significant community benefit or operational practicalities is identified. The City recognises the value in providing access to community facilities for a variety of activities, which enhance community, social, health and wellbeing outcomes.
- The City recognises the value in providing access to facilities to commercial organisations in circumstances where the organisation's activities provide a significant community benefit.
- The City is the Asset owner and is responsible for providing safe, and compliant facilities and ensuring that any proposed usage is appropriate to the type and location of facilities.
- The City aims to balance a fair and reasonable contribution from users of community facilities with the subsidy required from rates.

3. Categories of Occupancy Arrangements

Category	Application	Term
Lease Agreement	Exclusive use of whole or portion of a facility or land, at all times.	<ul style="list-style-type: none"> • Five years with a five year renewal option at the sole and absolute discretion of the City. • Council may consider shorter terms where required for transitional arrangements
Licence Agreement	Non-exclusive continued use of the whole or portion of a facility or land for an agreed amount of time.	

4. Registration of Interest

Organisations can register an interest in entering a Lease or Licence in one of two ways:

1. Where Council determines that City property is available for lease or licence, it will call for registrations of interest based on the criteria set out in this Policy (see Table 1 below). Registrations of interest will then be considered by Council.
2. An eligible organisation may at any time approach the City for a Lease or Licence for a City owned property by providing an evidence-based case to demonstrate its activities respond effectively to identified community needs (see Table 1 below). In this case, Officers will consider whether a lease or licence is potentially feasible, and if so, a preliminary proposal is to be considered by Council to decide if the property can be made available for Lease or Licence following which a Registration of Interest process will be implemented.

5. Pre-Leasing/Licensing Requirements

Prior to the granting of a lease/licence, a prospective Occupant must present an evidence-based business case proposal to demonstrate that its activities respond effectively to identified community needs and its internal capacity to meet the terms of an Occupancy Arrangement. Table 1 below outlines the requirements and considerations of such a proposal.

Table 1 – Requirements and Considerations of Occupancy Proposal

Organisation to provide	City assessment factors
Community Benefit	
Provide an evidence based response to demonstrate how the proposed service or activity will address an identified community need	<p>Evidence of demand for the service or activity</p> <p>Evidence that the proposed service or activity will effectively address the identified community need and is not duplicating an existing service or activity</p> <p>Evidence of consultation with other organisations/agencies and/or the broader community to identify opportunities for collaboration</p> <p>An implementation plan to demonstrate how the service or activity will become established and become sustainable</p>
Strategic documents	Do the organisation's strategic documents align with the City strategies, plans and vision?
Membership and participant numbers and projections	<p>Information on the current membership, residential location and participation rates of the organisation and projections over the life of the lease period.</p> <p>Priority will generally be given to business cases that demonstrate inclusion of, and support to the local residents and community.</p>
The governance structure and processes of the organisation	The organisations constitution and/or similar documents

Proposed usage times of the property; historical and projected growth of the organisation	Will the property be utilised to its realistic potential? Does the property have the capacity to manage the growth?
Proposed spaces to be included in arrangement	Does the organisation require exclusive use of the property?
Proposed usage available to the wider community and method to manage	How does the proposal address broad community access?
Financial and Asset Management	
Financial positions/statements: past, present and future	Evidence that the organisation is capable of meeting financial obligations under an occupancy arrangement by providing the three (3) previous financial year reports (for the purposes of assessment capital grant income is excluded)
Current and proposed fees and charges	Information on the proposed fees and charges for the service or activity and how they will be reviewed and over the life of the lease/licenced period
Any property modifications required for the intended use and how these are proposed to be funded	Is funding secure for any proposed modifications to enable the intended use?
Organisation management structure	Is the organisation in a position with human resources to fulfil its obligations under an occupancy arrangement for the entirety of the arrangement?
Historical Factors	
History of the group (including any financial contributions)	Does the group have any history in relation to the facility? Does the group have a connection with the surrounding area?
Environmental Impact	
Proposed sustainable practices	Does the organisation offer an environmentally sustainable service?

6. Market Rent Value

In cases of a commercial lease, the market rental value of each property is to be determined by a licensed valuer.

7. Eligibility and Calculation of Rent Subsidy

The City may subsidise rent for eligible Organisations. The eligibility criteria is set out in **Table 2** and the rental rate is summarised in **Table 3**.

Table 2 – Eligibility Criteria for subsidised rent

Elements	Criteria
Not-for-Profit Organisation	<ul style="list-style-type: none"> Is a not for profit legal entity incorporated under the <i>Associations Incorporation Act 2015</i> or the <i>Australian Charities and Not-for-Profits Commission Act 2012</i> Is financially viable, demonstrates good financial management, record-keeping practices and maintains records for audit purposes.
Child Health Service	<ul style="list-style-type: none"> Recognition of the historic relationship between the City and the Health Department in providing effective Child Health Services when and where they are needed

Table 3 – Rent

Category	Annual Rent	Eligibility
Peppercorn rent	As determined annually in the City's Schedule of Fees and Charges	<p><u>Standard Peppercorn</u></p> <ul style="list-style-type: none"> Meets all relevant criteria in Table 1 and Table 2; Provides significant and extensive community benefit; Has limited revenue-raising ability as per the Appendix and Is run predominantly by volunteers <p><u>Non-Standard Peppercorn</u></p> <ul style="list-style-type: none"> Building fully or substantially funded or constructed by the proposed Occupant
Subsidised rent	<ul style="list-style-type: none"> Community Facilities: as detailed in the Appendix and increasing in line with CPI Land: to be negotiated 	<ul style="list-style-type: none"> Meets all relevant criteria in Table 1 and Table 2 Council has determined that the service or services being provided address priority needs in the proposed location
Commercial rent	Market value	Meets all relevant criteria in Table 1

8. Variations / Special Conditions

The City will consider proposals for variations and special conditions for Occupancy Arrangements on a case by case basis, with the understanding that:

- No basic aspects of the Lease and Licence Policy are to be contravened or subverted.
- These are unique to the Occupier, Building / Land or Usage conditions/requirements.
- These do not require any undue additional cost to the City either in the short or long term.
- These are conditional on Council approval.

9. Insurance & Indemnities

The following outlines the standard lease/licence conditions (unless otherwise agreed)

- a) The Occupant shall be responsible for:
 - i. Taking out and maintaining public liability insurance of \$20 million (\$20,000,000.00) (**Public Liability Insurance**)
 - ii. taking out and maintaining liability for all actions or omissions of the Occupant's employees, contractors, invitees and agents (**Liability**)
 - iii. indemnifying the City against all actions, claims and costs made or suffered by the City unless caused by the negligent or wrongful act of the City (**Indemnity**)
 - iv. taking out and maintaining workers compensation insurance where the occupant employs persons; and
 - v. taking out and maintaining insurance for the occupants own contents and equipment that may be left on the Premises.
- b) The City is responsible for:
 - i. taking out and maintaining insurance against those City constructed buildings or structures located on the Premises. The City will not cover the contents insurance of the Occupier.

10. Expiration of Occupancy Arrangement

Where an Occupancy Arrangement reaches its expiry date, the City will undertake a Registration of Interest process for the property, as outlined in clause 4 of this policy.

11. Legislative Requirements

Consideration into entering into the negotiation of an Occupancy Arrangement may need to take into account legislative requirements, such as:

- *Local Government Act 1995*, Section 3.58(5) – Disposing of Property
- *Regulation 30 Local Government (Functions and General) Regulations 1996*
- *Land Administration Act 1997*, Section 18 – the Minister for Lands must approve all leases on reserves vested in Council. The Minister will only grant a lease for a maximum of 21 years unless exceptional circumstances apply.
- *Planning and Development Act 2005*, Section 136 – The Minister for Planning approval may be required if the lease exceeds 20 years.
- *Occupiers Liability Act 1985* - Consideration to the content of this act needs to be given where the City retains responsibility of maintenance or repair of the premises.

- *Occupational Safety and Health Act 1984 & Occupational Safety and Health Regulations 1996* need to be taken into consideration when allowing people who may utilise the facility as a workplace where the City is still retaining maintenance responsibilities.
- *Commercial (Retail Tenancy) Agreements Act 1985* – Consideration to commercial tenancy agreements in relation to retail shop leases
- *Residential Tenancies Act 1987* – Consideration to the rights and responsibilities of tenants and property owners/agents.

12. Occupant Responsibilities – Standard Schedule

Outgoings (See Note 1)

- Electricity
- Water and sewage
- Gas
- Waste removal
- Security responses and call outs

Maintenance (See Note 2)

- General cleaning of the building and/or premises
- Removal of excess rubbish
- Repairs and replacement of light bulbs and tubes
- Replacement of window glass resulting from internal impacts.
- Repair of all plumbing, such as: washer replacements, leaking taps, blockages, tap ware, toilet cisterns.
- Removal of internal graffiti where no break in has occurred and repaint if necessary
- Replacement of lost/stolen air conditioning control units
- Repair damage to any fitting, doors, door handles, door hinges, floor covering, wall, ceiling, installation, equipment etc. which have been damaged as a result of incidental or malicious actions, or negligence – as determined by City of Armadale's Property Condition Report.
- Replacement keys/access swipes if lost or stolen including locks if replaced – must be arranged by the City
- Air conditioning units cleaning / inspections.
- Professional carpet cleaning bi-annually.
- Clearing and removal of debris in gutters bi-annually
- All grease trap cleaning & filter replacements as required to maintain effective operation
- Internal painting every five years

Note 1: Outgoings

If the Outgoings cannot be charged separately directly to the Occupier, then the City will calculate a percentage of the total of each assessment issued in respect of the facility/land or part thereof (acting reasonably) that will be payable by the Occupier.

Note 2: Maintenance

In negotiation with the Occupier, the City will identify where it is more appropriate or where the Occupier requests the City to perform/contract maintenance which will be at the Occupier's cost.

An Occupant's responsibility to carry out maintenance items on the above list may differ depending on the nature of an individual facility. As such, the above list of maintenance items is a non-exhaustive list.

As the City sets the levels of service for all its Assets, additional maintenance responsibilities may be attributable to the Occupier which will be set out in the Special Conditions Schedule of the Agreement.

13. Influencing Strategies or Plans

N/A

14. Applicable Legislation

Act	<i>Commercial (Retail Tenancy) Agreements Act 1985</i> <i>Land Administration Act 1997</i> <i>Local Government Act 1995</i> <i>Local Government (Functions and General) Regulations 1996</i> <i>Occupiers Liability Act 1985</i> <i>Occupational Safety and Health Act 1984</i> <i>Occupational Safety and Health Regulations 1996</i> <i>Planning and Development Act 2005</i> <i>Residential Tenancies Act 1987</i>
Regulation	Regulation 30 <i>Local Government (Functions and General) Regulations 1996</i>
Local law	Property Local Law

15. Definitions

Act means *Local Government Act 1995* (WA).

Asset Renewal is defined as the replacement or refurbishment of an existing asset (or component) with the same or modern day equivalent asset (or component) towards the end of its lifecycle to ensure service delivery at the same level as the existing asset.

Asset Upgrades/Additions are defined as capital improvements, upgrades and alterations to a facility.

City means City of Armadale.

Commercial Organisation means an organisation that can lawfully distribute their funds in excess of operating expenses (ie. surplus funds or profit), to owners, directors, members or any other stakeholders..

Community Facility means any building or structure owned or managed by the City, and categorised as:

- Halls
- Pavilions
- Clubrooms and change rooms
- Community Centres
- Sheds

Grant Funded Organisation means a not for profit entity delivering a community social service with the assistance of a Commonwealth or State Government operating grant and/or qualify for charitable status under the *Charities Act 2013* (Cth).

Lease means exclusive use of whole or portion of a facility or land, at all times.

Licence means non-exclusive continued use of the whole or portion of a facility or land for an agreed amount of time.

Maintenance is defined as the Occupier responsibilities as specified in the City's Standard Maintenance Schedule.

Community based not for Profit Organisation means an entity that provides a service or activity for the benefit of the community and does not operate for the profit, personal gain or other benefit of its members or third parties and which applies all proceeds from its activities to the organisation's purposes.

Occupancy Arrangement means a right to continual use of a community facility in whole or in part for a minimum period of six months and specifically excludes seasonal, regular or casual hire.

Occupier means the occupant of the community facility

Organisation means a Commercial Organisation or Not-For-Profit Organisation

Outgoings is defined as the Occupier responsibilities as specified in the City's Standard Maintenance Schedule.

Registration of Interest means a document to assist in determining the level of community interest in a Community Facility.

Regulations means the *Local Government (Functions and General) Regulations 1996* (WA).

Statutory Inspections/Requirements means services to Fire extinguishers, Exit signs, Pest Control, RCDs and testing and tagging of electrical items, Asbestos inspections.

VERSION CONTROL			
RELEVANT DELEGATIONS	1.1.4 - Administration of Leases and Licences		
INITIAL COUNCIL ADOPTION	19/04/2021	REFERENCE	C9/4/21
LAST REVIEWED	14/07/2025	REFERENCE	C5/7/25
NEXT REVIEW DUE	Click or tap to enter a date.		

APPENDIX

Subsidised Rent Category for Community Facilities

Subsidised Rent for Community Facilities will take into consideration tenant's average revenue (over three years), facility size and facility quality. Organisations will also need to meet the eligibility requirements as outlined in the Policy. Subsidised rent will be calculated by:

$50\% \times (\text{Square Metres of Leased or Licenced Area(s)} \times \text{Category Rate}) + 50\% \times (\text{Annual Tenant Revenue} \times \text{Relevant Average Percentage in Table 1}).$

Example: Group A lease 250m², their average revenue is \$45,000. Their building is a category 2

$50\% \times (250\text{m}^2 \times \$25) + 50\% (\$45,000 \times 5.75\%) = \$4,419$

Facility Size

This refers to the size of the leased or licenced area(s) in square metres (m²).

Facility Condition

All leased or licenced area(s) spaces are included in the following categories with the associated charges:

Category 1	\$20/m ² per annum
Category 2	\$25/m ² per annum
Category 3	\$35/m ² per annum

City Facilities are categorised for subsidised rent based on the Enterprise Asset Management (EAM) system that the City uses that is applied to the City's assets via internal management processes. This is based on condition assessments completed on the facilities.

Category 1	EAM Score 3-5
Category 2	EAM Score 2
Category 3	EAM Score 1

Should a tenant not have exclusive use of the entire facility, the facilities classification will be reduced by one (1) category. This will not be applicable for Category 1 facilities.

Tenant Revenue

The following percentages are to be applied to the average revenue of a tenant over a three-year period (excluding capital grants):

Table 1:

Revenue	Percentage of Average (3 Years) Revenue
< \$29,999	Peppercorn
\$30,000 - \$39,999	5.5% of average revenue
\$40,000 - \$49,999	5.75% of average revenue

\$50,000 - \$59,999	6% of average revenue
\$60,000 - \$69,999	6.25% of average revenue
\$70,000 - \$79,999	6.5% of average revenue
\$80,000 - \$89,999	6.75% of average revenue
\$90,000 - \$99,999	7% of average revenue
> \$100,000	7.25% of average revenue

Peppercorn Rent

Peppercorn Rent will be applied to organisations who meet the eligibility requirements in the Policy. Limited revenue raising ability is considered to be an average revenue of less than \$29,999 over a three (3) year period.

Additional Considerations to be Applied

- Organisations who have local branches within the City will be charged rent at the Market Value for the leased or licenced space(s).
- Tenants who occupy a small space (<100m²) will be provided the following discounts to the Subsidised Rent charge (does not include Peppercorn Rent):
 - 0m² to 25m² = 75% discount
 - 26m² to 50m² = 50% discount
 - 51m² to 100m² = 25% discount

For the above applicable tenants, the discount will be applied after calculating the total subsidised rent.

Process of Phasing in Subsidised Rent Model

For community groups entering the first term of their lease or license under this new policy, the following discounts will apply:

Year 1	75% Discount
Year 2	50% Discount
Year 3	25% Discount
Year 4	Normal Rate
Year 5	Normal Rate

These discounts will be applied after calculating the total subsidised rent and will only be available for the first term (not including any options) lease or license under the new policy. The discount will not apply to any subsequent options or new leases or licenses thereafter.



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